CMPMO No.63 of 2007.

2.11.2007. Present: Mr. Onkar Jairath, Advocate, for the petitioner.

Mr. Ramesh Sharma, Advocate, for the respondent.

After hearing the learned counsel for the parties and on perusal of the impugned order dated 9th March, 2007, I feel that the learned trial Court by improper and incorrect appreciation of material on record as well as the evidence wrongly rejected the petitioner's application filed under Order 9 Rule 7 of the Code of Civil Procedure for setting aside ex-parte proceedings against him.

The petitioner-defendant was proceeded against ex-parte on 27th February, 2007. Application for setting aside ex-parte proceedings was filed just three days later, on 2nd March, 2007.

The learned trial Court believed the testimony of the Process Server and did not believe or rely upon the evidence adduced by the petitioner.

Without going into the disputed question about the veracity of the respective claims of the parties, I feel that in the facts and circumstances of this case, the ex-parte proceedings initiated on 27th February, 2007 deserve to be set aside.

I accordingly allow the application filed by the petitioner under Order 9 Rule 7 of the Code of Civil Procedure. The impugned order dated 9th March, 2007 is thus set aside. The ex-parte proceedings against the petitioner-defendant are also set aside with all the consequences.

The petition is disposed of.

CMP No.137 of 2007.

In view of the disposal of the main petition, this application is also disposed of. Interim order passed on 3rd April, 2007 shall stand vacated.

2nd November, 2007. (V.K. Gupta), C.J.

(tr)